

REMARKS

This Application has been carefully reviewed in light of the Official Action dated February 23, 2004. In order to advance prosecution of the present Application, Claims 1 AND 22 Have been amended. Applicant respectfully requests reconsideration and favorable action for this Application.

Claim 1 stands objected to for a minor informality. Claim 1 has been amended to address the informality identified by the Examiner.

Claims 1-3, 5, and 22 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-3 and 5 of U.S. Patent No. 6,317,775. Attached herewith is a Terminal Disclaimer to overcome this rejection.

Claim 22 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 22 has been amended to address matters raised by the Examiner. Therefore, Applicant respectfully submits that Claim 22 is in accordance with 35 U.S.C. §112, second paragraph.

Claims 1-3, 5, and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Caccavale, et al. Independent Claims 1 and 22 recite in general the predicted responsiveness indicators being operative to predict the response time of each of the plurality of servers with the predicted response time for each of the plurality of servers being a function of the number of client connections being handled by a particular server. By contrast, the Examiner readily admits that the Brendel, et al. patent fails to disclose the use of predicted responsiveness indicators. To support the claimed predicted responsiveness indicators, the Examiner cites the Caccavale, et al. patent in combination with the Brendel, et al. patent. However, the

Caccavale, et al. patent merely discloses sending out probes and identifying the length of time it takes a server to respond to the probe during periods of low activity. Thus, the Caccavale, et al. patent does not take into account a number of connections being handled by the servers as provided by the claimed invention. Support for the above recitation can be found at page 27, lines 18-20, of Applicant's specification. Independent Claim 22 Therefore, Applicant respectfully submits that Claims 1-3, 5, and 22 are patentably distinct from the proposed Brendel, et al. - Caccavale, et al. combination.

There has been no indication from the Examiner that the documents cited in the Information Disclosure Statement submitted on October 9, 2001 have been considered during examination of the present Application. Applicant respectfully requests the Examiner to provide the appropriate indication that the documents cited therein have been considered during examination of the present Application.

CONCLUSION

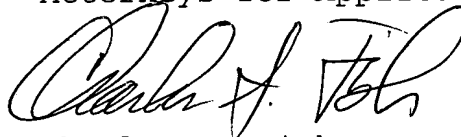
Applicant has now made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of Claims 1-3, 5, and 22.

The Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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